

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Colin Gardner	Team: Squad #11	CCRB Case #: 201508819	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/11/2015 10:01 AM	Location of Incident: 104th Avenue and 221st Street	Precinct: 105	18 Mo. SOL 4/11/2017	EO SOL 4/11/2017	
Date/Time CV Reported Sun, 10/11/2015 10:18 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/16/2015 12:51 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Smith	27519	926140	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Napolitano	14017	956967	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Smith	Abuse: PO Robert Smith refused to provide his name and shield number to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Robert Smith	Abuse: PO Robert Smith threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On October 11, 2015, at approximately 10:01 a.m., § 87(2)(b) was driving with his friend, § 87(2)(b) when he was pulled over by PO Robert Smith and PO Richard Napolitano from the 105<sup>th</sup> Precinct on the corner of 104<sup>th</sup> Avenue and 221<sup>st</sup> Street, in Queens. PO Smith allegedly refused to provide his name and shield number upon § 87(2)(b) request for that information (**Allegation A**). PO Smith told § 87(2)(b) that he would lock him up (**Allegation B**). PO Smith issued § 87(2)(b) a summons for § 87(2)(b) (see **Board Review 8**). § 87(2)(b) was also issued another summons for § 87(2)(b) by PO Napolitano regarding this incident, but the summons was sent to the court system before it was received (see **Board Review 9**).

There is no video footage for this incident.

This case exceeded 90 days because it was sent to the Mediation Unit on November 5, 2015, and was returned for an investigation during a mediation session because § 87(2)(b)

### Mediation, Civil and Criminal Histories

- The case was sent to and returned from the Mediation Unit.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(b) did not file a Notice of Claim regarding this incident (see **Board Review 7**).

### Civilian and Officer CCRB Histories

- This was the first CCRB complaint filed by § 87(2)(b) (see **Board Review 5**).
- PO Robert Smith has been a member of the service for 16 years and there is one substantiated CCRB allegation against him. In case # 201115947, an offense language allegation was substantiated against PO Smith. The Board recommended charges; the NYPD has issued no disposition.

### Findings and Recommendations

#### Allegations Not Pleaded

- § 87(2)(g)

**Allegation A – Abuse of Authority: PO Robert Smith refused to provide his name and shield number to § 87(2)(b)**

**Allegation B – Abuse of Authority: PO Robert Smith threatened to arrest § 87(2)(b)**

It is undisputed that § 87(2)(b) asked PO Smith for his name during this incident.

§ 87(2)(b) stated that after the officers walked back to their vehicle to write the summons for failure to stop at a stop sign, § 87(2)(b) opened his door a few inches, but did not fully open the door. While PO Smith was inside the police vehicle, he told § 87(2)(b) to stay inside of his

vehicle. § 87(2)(b) did not exit his vehicle. When PO Smith returned § 87(2)(b) license, registration, and presented him the summons for § 87(2)(b) (see **Board Review 9**) written by PO Richard Napolitano, § 87(2)(b) then asked PO Smith for his badge number and name. PO Smith told § 87(2)(b) that his name and badge number were on the summons. § 87(2)(b) started writing down PO Smith's and PO Napolitano's names that he saw on their uniforms and repeated his request for PO Smith's name and badge number. PO Smith responded, "Oh you want to be a smart ass now? I'm going to show you what I'm going to do." PO Smith grabbed § 87(2)(b) license and the summons back from § 87(2)(b) hand. PO Smith told § 87(2)(b) that he would "lock up" § 87(2)(b) but PO Smith did not explain why he would lock him up. PO Smith returned to the police vehicle, as did PO Napolitano. § 87(2)(b) the passenger in § 87(2)(b) vehicle, exited the vehicle. § 87(2)(b) felt threatened by PO Smith now that he was alone, so he decided to call 911 because he was scared. § 87(2)(b) originally stated he dialed 911 before PO Smith and PO Napolitano returned to his vehicle with the original summons, and before he asked PO Smith for his name and badge number. PO Smith returned to § 87(2)(b) vehicle several minutes later to return his license and the original summons, and PO Smith issued him an additional summons for § 87(2)(b). PO Smith did not provide his name and badge number to § 87(2)(b) at any point during this incident (see **Board Review 1**).

On the 911 recording, § 87(2)(b) told the 911 operator and the IAB detective he spoke to that he asked both officers for their names and PO Smith said to him, "You want to play games? Now I'm going to show you something." § 87(2)(b) later told the IAB detective that PO Smith told him, "I'm going to teach you a lesson." § 87(2)(b) stated that PO Smith took his license and the summons he was just issued out of his hand when PO Smith made these comments to him. § 87(2)(b) told the 911 operator that he was scared because he was unsure of PO Smith's intentions when he made these comments. § 87(2)(b) made a second call to 911 and to ask for a supervisor to arrive at the scene and eventually began crying. There is no audio of PO Smith, PO Napolitano, or § 87(2)(b) on this 911 recording (see **Board Review 10**).

§ 87(2)(b) stated that when PO Smith returned to § 87(2)(b) vehicle and issued § 87(2)(b) a summons, § 87(2)(b) asked PO Smith for his name and badge number. PO Smith started yelling at § 87(2)(b) after he asked PO Smith for his name and badge number, and § 87(2)(b) did not want to stay in the van after PO Smith yelled at § 87(2)(b). § 87(2)(b) did not recall exactly what PO Smith was yelling, but he did recall PO Smith saying, "Why do you want my badge number? You know who I am." § 87(2)(b) remained calm and did not raise his voice as PO Smith started to yell at him, but § 87(2)(b) did not recall exactly what § 87(2)(b) said in response. § 87(2)(b) did not exit the vehicle at any point while § 87(2)(b) was present. § 87(2)(b) heard PO Smith tell § 87(2)(b) that he could have § 87(2)(b) arrested, but he did not hear PO Smith explain what § 87(2)(b) could be arrested for. § 87(2)(b) did not talk to anyone on his cell phone while § 87(2)(b) was inside of his vehicle. § 87(2)(b) exited the vehicle after PO Smith started yelling at § 87(2)(b) and walked to his aunt's house, which was a few blocks away. PO Smith did not provide his name or badge number to § 87(2)(b) at any point while § 87(2)(b) was in the vehicle (see **Board Review 2**).

PO Smith stated that when he first approached the vehicle, he approached the passenger side, and PO Napolitano approached the driver's side. § 87(2)(b) argued with PO Napolitano about the

initial traffic stop and told PO Napolitano, “This is bullshit, this is typical police brutality,” and § 87(2)(b) was also uncooperative with providing his license to PO Napolitano. § 87(2)(b) eventually provided his license and registration to PO Napolitano, who took those documents back to the police vehicle with PO Smith, and PO Napolitano wrote a summons.

PO Smith decided to return to the driver’s side of the vehicle and take control of the stop because PO Napolitano was a new officer and § 87(2)(b) was being uncooperative. As PO Smith returned to § 87(2)(b) vehicle to issue the summons, § 87(2)(b) exited his vehicle and refused to get back inside after PO Smith requested that he do so. § 87(2)(b) started yelling, “This is police brutality!” and he also called PO Smith a, “White motherfucker.” PO Smith observed three to five people gather on the sidewalk outside of the passenger side of § 87(2)(b) van as § 87(2)(b) continued to yell. PO Smith observed a few cars passing by him and § 87(2)(b) as they stood outside of § 87(2)(b) vehicle in the street. PO Smith believed a few cars had to drive around him and § 87(2)(b) in the street, but he did not recall how many.

PO Smith told § 87(2)(b) “I need you back in the vehicle, I don’t need to get hit today, and I don’t need you to get hit on my car stop.” PO Smith instructed § 87(2)(b) to get back into his vehicle eight to ten times over the course of approximately two to three minutes. PO Smith then told § 87(2)(b) “If you don’t go back into your vehicle, you are not listening to a lawful order and I will place you under arrest.” PO Smith further explained to § 87(2)(b) that he would be arrested for disorderly conduct if he did not follow PO Smith’s order. PO Smith believed § 87(2)(b) was engaged in disorderly conduct when he started screaming and cursing outside of his vehicle. § 87(2)(b) eventually went back into his vehicle and then PO Smith walked back to the police vehicle to write an additional summons for § 87(2)(b).

PO Smith returned to § 87(2)(b) vehicle and handed him the original summons and the summons for disorderly conduct. After PO Smith handed § 87(2)(b) the summonses, § 87(2)(b) told PO Smith, “I need your name,” and PO Smith responded, “My name is Officer Smith, and it is on the bottom of the summons I just issued you.” § 87(2)(b) asked PO Smith one time for his name, and he provided his name to § 87(2)(b) after the initial request. PO Smith did not provide his shield number to § 87(2)(b) and he did not recall if § 87(2)(b) asked him for his shield number (see **Board Review 3**).

PO Smith noted in his memo book, § 87(2)(b) became loud and boisterous and jumped out of his vehicle yelling and screaming and blocked off the streets” (see **Board Review 11**). On the disorderly conduct summons, PO Smith wrote that § 87(2)(b) “came out the car and was screaming and yelling and made it hard for the motor vehicles to pass by in an orderly fashion” (see **Board Review 8**).

PO Napolitano was consistent with PO Smith that he initially approached the driver’s side, § 87(2)(b) argued with PO Napolitano, and that § 87(2)(b) exited his vehicle and refused to comply with multiple orders to return to his vehicle, and was yelling and screaming. Eventually, § 87(2)(b) returned to his vehicle. § 87(2)(b) was on the phone when PO Smith handed him the disorderly conduct summons. PO Napolitano did not hear any of the conversation. PO Napolitano did not recall if PO Smith engaged in any conversation with § 87(2)(b) about being arrested. PO Napolitano did not hear § 87(2)(b) ask PO Smith for his name or badge number,

nor did he hear PO Smith refuse to provide that information (see Board Review 4). PO Napolitano also noted in his memo book, “Driver was irate, yelling, goes out of his car while we were preparing summons. We told driver multiple times to get back into the car. Did not comply, just yelling and screaming we are not being fair and begged me to give him a break. After not listening to us, PO Smith issued C summons for § 87(2)(b)” (see Board Review 12).

According to Patrol Guide Procedure 203-09, an officer must clearly state their rank, name, shield number, and command or otherwise provide them, to anyone who requests you to do so (see Board Review 15).

§ 87(2)(g)

[REDACTED]

A person commits disorderly conduct when with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he obstructs vehicular or pedestrian traffic. N.Y.S. Penal Law §240.20(5) (See Board Review 16). The disorderly conduct statute is aimed at conduct which incites or risks inciting “a breach of the peace” or “public disturbance” and applies to situations which carry beyond individual disputants and become a public concern. People v. Square, 20 Misc.3d 1126A (N.Y.Cty. Crim. Ct. 2008) (See Board Review 17). People v. Johnson 22 N.Y.3d 1162 (2014) states that disorderly conduct occurs when the obstruction has an element of public harm (see Board Review 18). In People v. Jones, 2007 NY Slip Op 9070, the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, is the result of obstructing vehicular traffic (see Board Review 14).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

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Squad: 11

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date